

Monday, February 10, 2020 at 16:41:07 Eastern Standard Time

Subject: Re: Michael Grecco Prods., Inc. v. Guardian News and Media LLC - Addressing SM Perth
Date: Tuesday, February 4, 2020 at 5:48:55 PM Eastern Standard Time
From: Stuart A. Weichsel
To: Terence Keegan
CC: David Korzenik
BCC: Stuart A. Weichsel, Ronald Adelman
Attachments: Google at 20_ how two 'obnoxious' students changed the internet __ Social Media Perth.pdf, Screen Shot 2020-02-04 at 5.40.23 PM.png, Screen Shot 2020-02-04 at 5.40.15 PM.png, Screen Shot 2020-02-04 at 5.40.09 PM.png, Screen Shot 2020-02-04 at 5.40.04 PM.png

Pursuant to your request, please find enclosed the evidence regarding SM Perth.
If you search the SMPerth website currently you will find a number of stories entitled "Powered by The Guardian" and credited to the Guardian.
This clearly implies a contractual relationship.

Each clearly reads something like this ["This article titled "Facebook says it was 'not our role' to remove fake news during Australian election" was written by Katharine Murphy and Christopher Knaus, for theguardian.com on Tuesday 30th July 2019 18.00 GMT"](#)

Some of them are also written by Alex Hern.

Please note that the four articles I have sent are all from late December. I am sure there have been more.

The subject Google article has the same credit, including "Powered by Guardian."

I must suggest that either your client is not being forthcoming with you. You also failed to do basic independent research.

Spending 10 minutes on the website shows that the website is currently displaying articles that it credits to the Guardian.

"We had already investigated this site, after you advised us of it in late December, and after you included a screen shot of the site as an exhibit in your January 6 filing. Our client has searched for any evidence of a relationship with SMPerth.com, and has found none. It has searched for evidence of having syndicated the article to SMPerth.com, and has found none. The article seems to have been reprinted on this website without Guardian's permission. "

If you investigated this matter in December, would you not have sent a take down notice to remove all Guardian articles from the website in the 2 months since I brought it to your attention? (Only the subject Google article has been removed.)

I will address your additional questions shortly.

Best regards,

Stuart Weichsel

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From: Terence Keegan <tkeegan@mkslex.com>
Date: Tuesday, February 4, 2020 at 5:20 PM
To: "Stuart A. Weichsel" <stuart.weichsel@stropheus.com>
Cc: David Korzenik <dkorzenik@mkslex.com>
Subject: Michael Grecco Prods., Inc. v. Guardian News and Media LLC

Stuart,

The Guardian has received no information from your client on the points we covered in our call with Magistrate Judge Freeman last week. As you know we have not only pre-conference statements due on Friday, but a joint report as well.

We therefore need immediate responses to the following:

1. Actual licenses from MGPStockphotos.com? We began discussing this website with you in *August*. In the nearly six months since, your client has failed to provide any evidence of actual third-party licenses from this site. In our last call with Judge Freeman, she reiterated that this was “the most basic information” your client should provide to facilitate the mediation.

Your client has used prices from this website as evidence of license rates for photographs in at least one other case. *Michael Grecco Prods., Inc. v. Function(X) Inc.*, No. 18-cv-00386-NRB, Dkts. 18-1, 19 ¶7 (June 26, 2018). Your client should provide to us evidence showing the total number of licenses for the photograph at issue through the MGPStockphotos.com website, as well as the type of use, date, size, geographic scope and price for at least the last five licenses through the website for the photo at issue. Alternatively, your client should provide to us a representation that there have been no licenses for the photo through the website. Your client cannot delay providing this information to us any longer.

2. Was Business Insider 10/13/2015 license part of a settlement? In August, you argued that a \$12,500 license in 2015 from your client to a Business Insider website was “most comparable” to our facts. But that amount is nearly 5 times more than what your client charges for even a ½ screen license on the MGPStockphotos website (to say nothing of the previous 2- and 3-digit licensing sums that your client also provided).

We have asked you whether the Business Insider license – for which your client has only produced a purported “stock invoice” from Michael Grecco Photography dated October 13, 2015 – was negotiated as part of a settlement. As Magistrate Judge Cott emphasized last year in *Otto v. Hearst Communications, Inc.* (2019 WL 1034116, at *9): “If the record is clear that a license was obtained as part of a settlement, and would not have otherwise been obtained but for the settlement, it is plainly misleading to suggest that the license has any significance independent of the settlement or that it should be used to form the basis of damages calculations.”

Your client should advise Guardian without further delay whether the Business Insider license was negotiated as part of a settlement of a claim.

3. Photo’s use on SMPPerth.com? You claimed on our call last week that your client recently showed you

evidence that the photo at issue was displayed with the Guardian article at a website called SMPerth.com. Your client has failed to share any such evidence with us.

We had already investigated this site, after you advised us of it in late December, and after you included a screen shot of the site as an exhibit in your January 6 filing. Our client has searched for any evidence of a relationship with SMPerth.com, and has found none. It has searched for evidence of having syndicated the article to SMPerth.com, and has found none. The article seems to have been reprinted on this website without Guardian's permission.

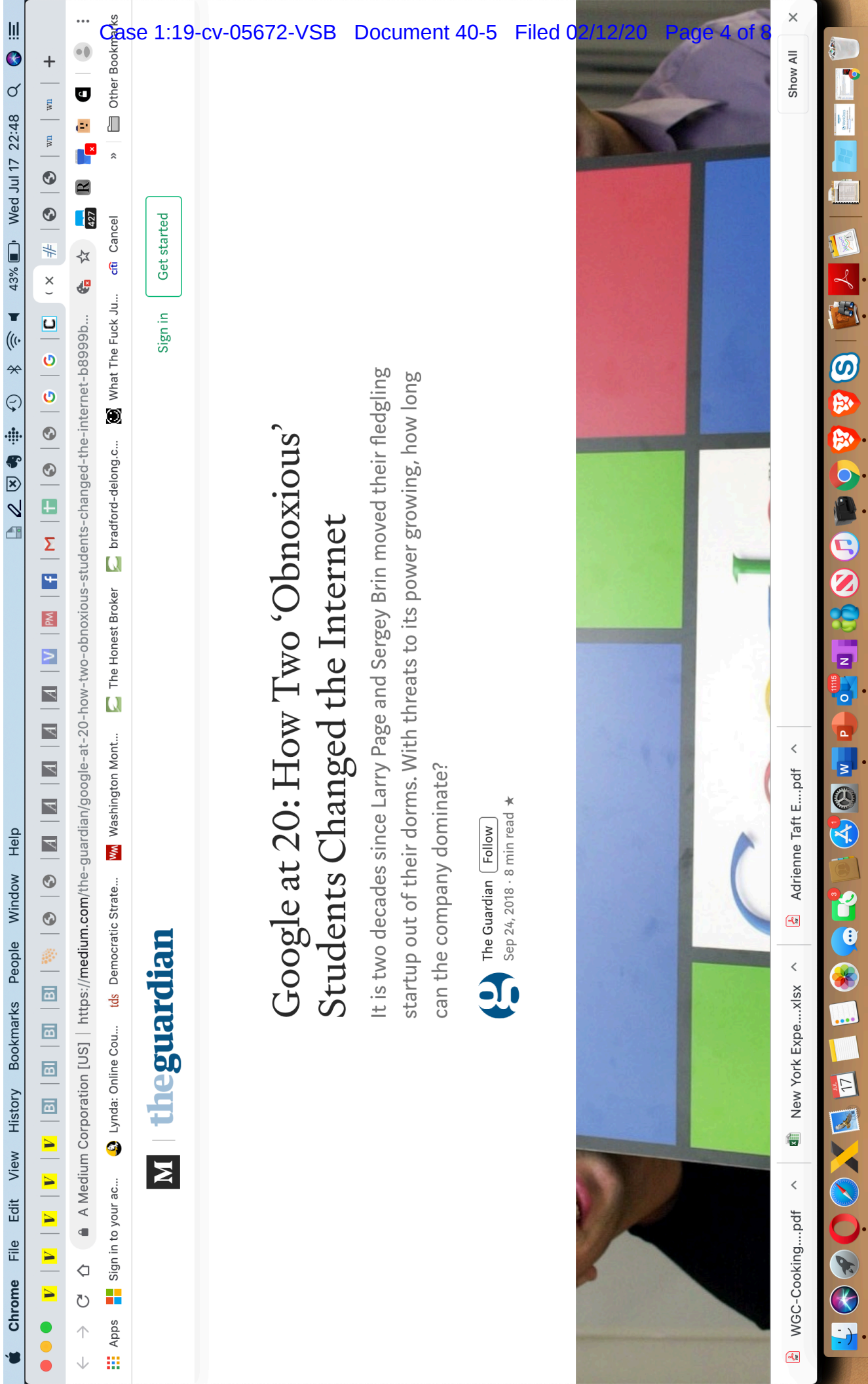
In any event, your exhibit did not show the photo at issue being displayed on the SMPerth.com website. Your client should be able to immediately furnish any evidence it has to the contrary. Otherwise this appears to have been a deliberate diversion from the actual market value questions we have been attempting to discuss for months.

Please advise us on the above three points immediately so that we have time to consider them with our client before the joint report and our pre-conference statements are due.

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In the summer of 1995, a second-year grad student called [Sergey Brin](#) was giving a tour of [Stanford University](#) to prospective students. [Larry Page](#), an engineering graduate from the [University of Michigan](#), was one of those being shown around the [Palo Alto, California](#) campus.

"I thought he was pretty obnoxious,"

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By The Guardian
September 24, 2018
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In the summer of 1995, a second-year grad student called Sergey Brin was giving a tour of Stanford University to prospective students. Larry Page, an engineering graduate from the University of Michigan, was one of those being shown around the Palo Alto, California campus.

From *The Guardian*
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